IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.No.7693 of 1996,
W.P.No.9266 of 1998,
W.P.No.23293 of 2001,
& W.P.No.8578 of 2006

W.P.M.P.No.1121 of 1996
in W.P.No.7693 of 1996
W.P.M.P.Nos.14180 & 14181 of 1998
in W.P.No.9266 of 1998
W.P.M.P.No.9529 of 2006
in W.P.No.8578 of 2006

K.Muthukrishnan ... Petitioner in all the W.Ps.

Vs.

1. The Tamil Nadu Electricity Board,
Rep.by its Secretary,
Madras 600 002.
... 1st Respondent R1 in W.P.No.7693/1996
and WP 8578/2006

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mannarpuram,
Trichy 20.
... 2nd Respondent in W.P.No.7693/1996
... and WP 8578/06 and 1st Respondent in WP 9266/98

3. V.Sivanu,
Executive Engineer,
Tamil Nadu Electricity Board,
Ariyalur Division (O&M),
Trichy.
... 3rd Respondent in W.P.No.7693/1996 and 2nd Respondent in WP 9266/98

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The Asst. Executive Engineer,
Tamil Nadu Electricity Board,
Ariyalur Division (O&M),
Trichy.
... 4th Respondent R4 in W.P.No.7693/1998

The Additional Chief Engineer,
T.E.D.C./North
Tamil Nadu Electricity Board,
Trichirapalli 20.

The Executive Engineer, O & M
Tamil Nadu Electricity Board,
Lalgudi, Trichi District. ... Respondents in WP 23293/01

The Assistant Executive Engineer,
Operation and Maintenance
Tamil Nadu Thottiyam - 621 205.. 3rd Respondent in WP 8578/06

PRAYER IN W.P.No.7693 of 1996 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the records of the 4th respondent in charge memo No.AEE/O&M/J/T/ARI/JA - 18/95 dated 30.09.1995 and the consequential enquiry notice sent by the 3rd respondent in Memo No.O/OEE/K.10/95-96 K.50/96 dated 08.04.1996.

PRAYER IN W.P.No.9266 of 1998 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the records pertaining to the suspension order passed by the 1st respondent bearing Memo No.677/Adm.4/A1/FDP/98 dated 12.05.1998 culminating in the Charge memo issued by the 1st respondent bearing Memo No.694/Adm.4/A1/FDP/98 dated 4/10.06.1998.

PRAYER IN W.P.No.23293 of 2001 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari, calling for the records pertaining to the order of the Second respondent bearing No.ந.அ.எண் செயற்பொறியாளர்/ஒடக்கவும்/காத்தவும்/ஒஎன்/தச/நி.பி./நி.உ.I/ஙேக/க.ச./ச.1533-2001 dated Nil-10-2001/3-11-2001.

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PRAYER IN W.P.No.8578 of 2006 : Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus, calling for the records of the second respondent pertainent to the Memo No.008/AAdo/ADM.I/A.1/F/Suspension/2006 dated 30.01.2006 and quash the same and also directing the respondents to permit the petitioner to retire with all retirement benefits.

For Petitioner in all W.Ps. : Mr. V.Ragupathy
For Respondents in all W.Ps. : Mr. M.Vaithiyanathan
T.N.E.B.

COMMON ORDER

In all these writ petitions, the petitioner is one of the same and therefore a common order is passed.

2. The writ petitioner in all these writ petitions joined as a Workman under the second respondent Tamil Nadu Electricity Board on 10.07.1967 at Pudukottai. He was subsequently promoted as a Construction Foreman in 1970 and transferred to Senthurai. He was promoted in 1984 as Foreman Grade II and posted to Ariyalur. The third respondent has transferred the petitioner in June 1995 from Ariyalur to T.Palur which was subsequently withdrew on 19.06.1995.

3. According to the petitioner, the third respondent has developed inimical attitude towards the petitioner and in fact when he was transferred, he filed a writ petitioner in W.P.16824 of 1995 before this court by impleading the petitioner as third respondent eventhough the petitioner has nothing to do with his transfer. It was at the instances of the third respondent, the charge memo dated 30.09.1995 passed by the fourth respondent was served on the petitioner on 03.11.1995. It was based on the charge memo the third respondent being the Executive Engineer has issued a memo dated 08.04.1996 calling upon the petitioner to appear for the enquiry before the Enquiry Officer. It is the said charge memo as also the subsequent enquiry notice which are impugned in these writ petitions. In W.P.No.7693 of 1996 the charges framed against the petitioner which are challenged are as follows:

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1) In respect of the articles supplied by the Tamil Nadu Electricity Board for its work, he has received various amounts on 01.02.1993, 06.03.1995, 07.03.1995 and 15.03.1995 by stating that he has purchased the same from various shops which is a misconduct under standing order No.30-IV and 30-V.

2) He has demanded an amount of Rs.25,000/- from Thir.A.Kannan a contract employee of the Tamil Nadu Housing Board, Valaja Town stating that the same has to be paid to the officers of the Department thereby bringing disrepute to the employees of the Tamil Nadu Electricity Board which is a delinquency punishable as per standing order No.30-XX and III.

4. The impugned charge memo is challenged merely on the ground that it was at the instance of the third respondent the order has been passed which is evident from the fact that the third respondent has issued a consequential enquiry notice and even though the impugned charge memo was dated 30.09.1995, the same was served on the petitioner only on 03.11.1995. Therefore, according to the petitioner, it is with mala fide intention the impugned charge memo has been framed.

5. Even though the respondents have not filed the counter affidavit in this writ petition Mr.M.Vaithiyanathan learned counsel for the Tamil Nadu Electricity Board has made his submission.

6. Mr.V.Ragupathy learned counsel appearing for the petitioner would mainly contended that the impugned charge memo dated 30.09.1995 relates to an alleged purchase which taken place on 01.02.1993, 06.03.1995, 07.03.1995 and 15.03.1995, therefore according to him in respect of an incident took place in 1993 a charge is framed in 1995 and therefore it should be taken as a belated one and at this point of time the petitioner cannot be expected to give a proper reply and defend himself from the charges.

7. That apart, in respect of the second charge the learned counsel would submit that the charge is framed inasmuch as it has not substantiated with any material and therefore according to the petitioner the charge has to be set aside.

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8. On the other hand the learned counsel for the respondent would submit that there is absolutely no delay in respect of the charge memo is framed in this case, since the charge framed in 1995 also relates to the instance which took place in 1995. As far as the contention of the learned counsel for the petitioner that in respect of the second charge the same is vague, the learned counsel for the respondent would submit that the petitioner without even giving explanation to the charges cannot raise the same issue. That apart according to him the necessary materials will be submitted at the time of enquiry. While admitting this writ petition there was an order of stay granted by this court which continue.

9. In respect of W.P.No.9266 of 1998 the petitioner challenges the order of the suspension passed against the petitioner by the Superintending Engineer the first respondent dated 12.05.1998 against the petitioner while he was working as a Foreman Grade I in Trichirapalli and the subsequent charge memo dated 4/10 6/1998 framed by the first respondent. The impugned charge memo which contains the charges against the petitioner as follows:

> "That the said K.Muthukrishnan, Foreman I Grade/O&M/Thelur has obtained a loan of Rs.50,000/- for construction of house situated at Plot in S.F.No.279/5B, Rajaji Nagar, Sendurai Road, Ariyalur Town Panchayat, Ariyalur from the Board with Plinth area of 72.29 sq.m.only that too for ground floor alone. But he has constructed the house with ground and first floor totalling 119.47 sq.m. at a total cost of Rs.1,15,000/-. The difference amount of Rs.65,000/- is illegally earned by him. Thus he has violated the provisions of Section 13(1)(e) of the prevention of corruption Act, 1988, and also a mis-conduct under Standing order 30(IV) applicable for non-clerical workmen."

10. The petitioner has submitted his explanation even in 1992 before the charge framed. According to the petitioner, he got sanction from the concerned Planning Authorities for putting up the construction first and second floor and in fact an application for additional accommodation has been accepted by the board, the petitioner also challenges the impugned suspension order on the ground that as per the clause 31(2)(a) of the standing order, within one week of the date of suspension, a statement has been served on the petitioner giving reason for such suspension and such statement has to be served on him only after one month from the date of suspension. The petitioner challenges the impugned orders of the charge memo as well as

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suspension also on the ground that without even consideration as to whether the petitioner caused any loss or damages to the board's property, the petitioner has been imposed with the misconduct. According to the petitioner, inasmuch as the actual misconduct has not been property explained, the alleged unexplained source of income does not cover under the provisions of the Prevention of Corruption Act.

11. It is also the further case of the petitioner that when the loan itself was sanctioned to the petitioner in the year 1990 and an inspection was effected admittedly as seen in the impugned charge memo itself on 11.09.1997, in respect of the loan obtained in the year 1990, the charges was framed in 1998 belatedly after 8 years. Therefore, on the basis of the vagueness of charge as also based on the ground of delay in framing charge, apart from stating that there is absolutely no materials to show that the petitioner has committed mis-conduct as per the standing order and it can never be treated as one under the Prevention of Corruption Act, the impugned order is challenged by the petitioner.

12. The respondents have filed a counter affidavit. While denying the allegations that the suspension order as also the impugned charge memo were framed based on the mala-fide intention, the respondent would state that it was based on the materials available in respect of obtaining of loan while admittedly the petitioner availing a loan of Rs.50,000/- he has put up construction to the value much more than that and therefore it was the duty of the petitioner being the employee of the respondent corporation to explain the source of such income which he has failed. According to the respondents the impugned charge memo is given in accordance with the standing order and it is in the disciplinary proceeding the correctness of the charge will be proved.

13. In respect of this case Mr.V.Raghupathi learned counsel for the petitioner would submit that when a loan was obtained in the year 1990 and the amount was sanctioned after inspection admittedly in 1997, the charge memo has no basis whatsoever. Therefore, according to him the charge memo as well as the suspension order has to be set aside on the ground of latches and also one of prolonged suspension. Learned counsel also would submit that the charge itself is issued based on surmises.

14. On the other hand Mr.Vaithiyanathan learned counsel appearing for the respondents would submit that there is absolutely no delay, In fact the lapses on the part of the petitioner were found out only in the inspection conducted in the

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year 1997 wherein the valuation was arrived at and it was immediately thereafter in June 1998 the impugned charge memo has been issued and it is for the petitioner to submit his explanation and prove his innocents during the time of departmental enquiry and therefore according to the learned counsel for the respondent it is not correct to state that the charges are hit by the principle of latches.

15. In respect of W.P.No.23293 of 2001 the petitioner challenges the proceedings of the second respondent dated October 2001 / 03.11.2001 calling the petitioner to appear for an oral enquiry on 17.11.2001. A reference to the said impugned order shows that it is in respect of the charges framed against the petitioner dated 02.07.1996 the enquiry is sought to be proceeded with. The charges are -

(1) When the petitioner was allotted a house belonging to the Theloor Electricity Sub-station he has not stayed in the said quarters and therefore it is against the Standing Order 30(1).

(2) While working as Foreman on 02.02.1996 at Ariyaloor, he has used office telephone for his personal use for the value of Rs.126/- which amount has been subsequently remitted on 26.06.1996 and that is against the Standing Order 30(IV).

(3) He has received a sum of Rs.5,000/- as a bribe from one Murugaiyan, S/o Kaliyaperumalon 21.09.1995 at 8.30 a.m. for providing Electricity Service Connection for Agricultural purpose under the preferential category.

(4) Between 1995 - 1996 he has not properly maintained the transformer. According to the petitioner he has attended the enquiry on 17.11.2001 and informed that he was not all served with the charges and was not aware of the charges and therefore he cannot defend himself and therefore the matter was posted to 28.11.2001, and the petitioner was permitted to read the charges which he has copied down even though the charges were not served on him.

16. The respondents have filed the counter affidavit. Accordingly, the first respondent would state that when the charge memo was attempted to be served on the petitioner, he has been evading the same and therefore it is not correct to state that the charges were not informed to him. As far as the delay in completing the charge memo is concerned, according to the first respondent since the writ petition was pending in this Court and there has been an order of stay of suspension passed

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against the petitioner, the disciplinary proceedings could not be concluded.

17. Mr.Raghupathy, learned counsel appearing for the petitioner, as far as this case is concerned would submit that even though the charge is stated to be dated 02.07.1996, the petitioner came to know about the charge only after the impugned notice dated 03.11.2001 was issued to him and therefore it is a case of extraordinary delay on the part of the respondents in vitiating the disciplinary proceedings and not even serving charge memo even as on today, and hence the impugned notice is liable to be set aside. According to the learned counsel, what is extracted as a charge in the typed set of papers is not served on the petitioner but it was only read by the respondents and copied by the petitioners.

18. On the other hand, Mr.Vaithiyanathan, learned counsel appearing for the respondents Electricity Board would submit that it was due to the pendancy of writ proceedings filed by the petitioner against the order dated 13.06.1996 under which the petitioner was placed under suspension and there was an order of stay by this Court, the further proceedings could not be proceeded with and therefore the delay is not on the part of the Electricity Board. Therefore, he would contend that the petitioner has to face the enquiry by submitting his explanation.

19. In respect of W.P.No.8578 of 2006 the petitioner challenges the order of suspension passed against the petitioner by the second respondent dated 30.01.2006, on the basis that enquiry into the grave charges against the petitioner then Foreman Grade I Theloor now Thotiyam is pending. According to the petitioner the said suspension is passed in respect of the charges dated 30.09.1995 against which the W.P.No.7693 of 1996 as stated above was filed and this Court has granted stay. The another reference in the impugned order is the charge memo dated 01.08.1997, about which the petitioner would submit that no such proceedings has been initiated so far and in any event it is after 9 years no charge itself has been framed and therefore according to the petitioner, the pendancy of those two referred charges in the impugned suspension order cannot be the ground for suspending the petitioner at the verge of his retirement.

20. In this case the respondent has not filed any counter affidavit.

21. Mr.V.Raghupathy learned counsel appearing for the petitioner would submit that the suspension order is intended only to prevent the petitioner from retiring peacefully. The suspension order is based on two referred charges under the suspension and in respect of one charge dated 30.09.1995 this

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court in W.P.No.7693 of 1996 has already stayed further proceedings and as far as the another charge stated to be on 01.08.1997 no charge has been so far framed and in any event due to the passage of time the respondent cannot be permitted to frame any charge especially in the circumstance that the petitioner is in the verge on retirement.

22. On the other hand, Mr.Vaithiyanathan, learned counsel appearing for the respondent would submit that it is only the case of the pendency of the writ petition and order of stay, the further proceedings could not be proceeded and therefore the delay cannot be attributed to the department. Considering the circumstance that the charges are grave in nature, it is always open to the petitioner to submit his explanation and defend himself.

23. I have heard the learned counsel for the petitioner as also the learned Government Advocate and considered the facts and circumstances of all the cases.

24. In all the above said cases Mr.V.Raghupathy learned counsel appearing for the petitioner would mainly rely upon the point of delay in proceedings with the disciplinary proceedings. To substantiate his contention that the delay will vitiate the departmental proceeds, he would rely upon various judgments of the Honble Apex Court and also this Court including the judgment of Apex Court rendered in P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board reported in 2005(6) SCC 636. That was the case wherein there was enormous delay of 10 years in initiating departmental enquiry without giving sufficient explanation for the delay and it was in those circumstances holding that the appellant has already suffered enough, on account of the pendancy of the disciplinary proceedings, the Honble Apex Court has quashed the charge memo.

25. In yet another judgment relied upon by the learned counsel for the petitioner rendered in Union of India rep. by its Commissioner of Income Tax, Tamil Nadu-I, Chennai and another Vs. The Central Administrative Tribunal, Chennai Branch, represented by its Registrar, High Court Building, Chennai and another reported in 2005(1) MLJ 634. A Division Bench of this Court has held that in respect of the delay in disciplinary proceedings the court has taking into consideration all the relevant factors and find out as to whether the delay is explained. The operative portion of the Judgment which runs as follows:

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"The Court has to take into consideration all the, relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay."

26. In yet another Judgment a Division Bench of this Court in Parameswaran Vs. State of Tamil Nadu, rep. by its Secretary to Government, Rural Development Department, Fort St.George, Chennai 9 and others reported in 2006(1) CTC 476While dealing with the circumstances wherein series of charge memo were issued and explanation submitted and in spite of that no further proceedings were initiated held that the prolonged disciplinary action will only cause mental agony to the employee. Following the dictum laid down by the Honble Apex Court rendered in P.V.Mahadevan Vs.Managing Director Tamil Nadu Housing Board, I had an occasion to deal with a similar circumstance in M.Elangovan Vs. Trichy Central Cooperative Bank Ltd., Trichirapalli and another reported in 2006(3) MLJ 621 by quashing the disciplinary proceedings holding that when the delay is unexplained, the mental agony and sufferings of the employee due to protracted disciplinary proceedings would be much more than the punishment itself. Therefore, there is absolutely no dispute regarding the legal position that in cases were there are inordinate and unexplained delay in completion of departmental proceedings against an employee that will certainly prejudice his interest and the court will interfere and quash the said proceedings. While applying the said legal position on the facts and circumstances of the case the charge memo dated 30.09.1995 which is impugned in W.P.No.7693 of 1996 relating to the alleged conduct of the petitioner in February 1995 and March 1995 cannot be said to be an undue delay. The further delay from 1995 till date is explainable due to the reason that admittedly this Court has granted stay for further proceedings and therefore the delay from 1996 till date cannot be attributable to the respondent / Electricity Board.

27. Moreover, the charges impugned in the said writ petition relates to the wrong claim made by the petitioner from the board and also demand of an amount by the petitioner and therefore certainly are serious and grave in nature and there is absolutely no ground for this Court to interfere with the charge memo to quash the same. It is always open to the petitioner to submit his explanation and prove his innocents.

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28. Considering the facts that the petitioner has attained the age of superannuation, while dismissing the writ petition in W.P.No.7693 of 1996, the petitioner is permitted to submit his explanation to the respondent in respect of the charges within a period of two weeks from the date of receipt of a copy the order and thereafter the fourth respondent who has issued the charge memo shall complete the enquiry after giving opportunity to the petitioner and pass appropriate orders within a period of eight weeks.

With the direction the W.P.No.7693 of 1996 is dismissed.

29. As far as the impugned charge memo challenged in W.P.No.9266 of 1998 dated 4/10.06.1998 a reference to the charge shows that in respect of the construction of the house he has obtained a loan Rs.50,000/- which was admittedly in the year 1987 and on inspection it was found that the construction value was Rs.1,15,000/-. Therefore there is a difference of Rs.65,000/-. It is seen by the letter of the petitioner dated 05.03.1992 in which the petitioner has stated that he has raised Rs.45,000/- by virtue of cutting and sale of many of the trees standing in the land worth nearly Rs.45,000/- that was the letter given by the petitioner much before the impugned charge memo which was in the year 1998 and even after giving such letter in the year 1992, six years afterwards the charge memo is issued. It is not even the case of the respondents that any steps taken to enquire the source. Further, while admitting the said writ petition this court has granted stay which is continuing as on date and therefore in respect of an event which has taken place in the year 1987 for which the petitioner himself has written as early as in the year 1992 explaining about the other source of income.

30. I am of the considered view, that apart from the fact that no useful purpose will be served to proceed with the impugned charge memo against the petitioner at the fag end of his carrier, the charge has to be certainly hit by a substantially delay. In view of the same I have no hesitation to come to the conclusion that the impugned charge memo which is challenging in W.P.No.9266 of 1998 deserves to be set aside and accordingly the same stands quashed and W.P.No.9266 of 1998 stands allowed.

31. Similarly in W.P.No.23293 of 2001 in which the impugned charge memo is of the year 2001 in respect of an alleged conduct of the petitioner in 1996. A reference to the charges show that they relate to the petitioner not staying in the electricity quarters allotted to him, in using telephone for his personal use to the expense of Rs.126/-, charge of receiving Rs.5000/- as

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bribe for electricity connection for agricultural purpose and not maintaining the transformer. It is also relevant to point out that as far as this case is concerned what is challenged is the enquiry notice directing the petitioner to appear for an enquiry on 22.11.2001 on which date the petitioner is stated to have appeared and complaint to the respondent that the charge memo has not been served on him and in fact he has noted out the charges on the said date which are as stated above.

32. In view of the fact that admittedly the charge memo has not been served on the petitioner and the petitioner had to take notes on 22.11.2001, when he appeared before the respondents based on the impugned notice of enquiry and due to the reason that it relates to the period 1996, the delay of six years has not been properly explained by the respondents and therefore the impugned notice dated 03.11.2001 calling for enquiry is set aside. Accordingly, W.P.No.23293 of 2001 stands allowed.

33. As far as the W.P.No.8578 of 2006 is concerned it is only an order of suspension dated 30.01.2006. However, in the impugned order of suspension there are two references on the basis of which suspension came to be passed namely charge memo dated 30.09.1995 which is the subject matter of W.P.No.7693 of 1996 which I have dismissed herein and another charge memo dated 01.08.1997 which according to the petitioner has not been served and no further proceedings is initiated.

34. In view of the fact, that I have directed the petitioner to submit his explanation regarding the charge dated 30.09.1995 which is impugned in W.P.No.7693 of 1996 directing the respondents to pass appropriate orders and for the reason that in respect of the second referred charge in the impugned suspension order no proceedings were initiated, it is open to the petitioner to make an application to the second respondent to review the order of suspension in which case the second respondent shall consider the same and pass appropriate orders within a period of four weeks from the date of receipt of the such application. Accordingly, W.P.No.8578 of 2006 stands dismissed with the above direction. For all the above said reasons and in the result:

1. W.P.No.7693 of 1996 stands dismissed with a direction to the petitioner to submit his explanation to the impugned charge memo dated 30.09.1995 to the fourth respondent within a period of two weeks from the date of receipt of a copy of the order and a further direction to the fourth respondent that on the petitioner submitting such explanation the fourth respondent shall complete the enquiry after giving sufficient opportunity to the petitioner and pass appropriate final orders within a period of four weeks there after.

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2. W.P.No.9266 of 1998 stands allowed and the impugned charge memo dated 4/10.06.1998 stands quashed.

3. W.P.No.23293 of 2001 stands allowed and the impugned enquiry notice dated 10th 2001/3.11.2001 stands quashed.

4. W.P.No.8578 of 2006 dismissed with a direction to the petitioner to file an application before the second respondent for review of the impugned order of suspension and on the petitioner filing such review the second respondent shall consider the same and pass appropriate orders within a period of four weeks thereafter.

No Costs. Consequently, connected W.P.M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary
Tamil Nadu Electricity Board,

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mannarpuram, Trichy 20.

3. The Asst. Executive Engineer,
Tamil Nadu Electricity Board,
Ariyalur Division (O&M),
Trichy.

4. The Additional Chief Engineer,
T.E.D.C./North
Tamil Nadu Electricity Board,
Trichirapalli 20.

5. The Executive Engineer,
O & M Tamil Nadu Electricity Board,
Lalgudi, Trichi District.

6. The Assistant Executive Engineer,
Operation and Maintenance, Tamil nadu
Thottiyam - 621 205.

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+ 3 ccs to Mr. V. Raghupathy, Advoate sr no. 44853 to 44855
+ one cc to Mrs. G. Devi, Advocate sr no. 44852
+ one cc to Mr. M. Vaidyanathan, Advocate sr no. 45340

NA(CO)
NM(31.10.2006)

Pre-delivery order in
W.P.No.7693/1996,
W.P.No.9266/1998,
W.P.No.23293/2001
& W.P.No.8578/2006

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